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THE UNITED STATES AND THE WORLD BANK: CONSTRUCTIVE REFORMER OR FLY IN THE FUNCTIONAL OINTMENT?

BARTRAM S. BROWN, *THE UNITED STATES AND THE POLITICIZATION OF THE WORLD BANK: ISSUES OF INTERNATIONAL LAW AND POLICY*. London and New York: Kegan Paul International, 1992. xvii + 295 pp.

*Reviewed by David A. Wirth**

INTRODUCTION

Defined as actions taken by member States that are “unrelated or inadequately related to the purposes and functions”¹ of a technically oriented intergovernmental organization, “politicization” as used in the title of this book is most definitely a pejorative. Following this definition, the World Bank becomes a paradigm for a phenomenon that threatens to “preoccupy and paralyze all of the specialized agencies,”² consequently disrupting a functional view of the international order which “assume[s] that economic, social and technical problems can be separated from political problems and insulated from political pressures.”³

After asserting that the phenomenon of politicization can be identified by objective legal parameters, the author then engages in a painstaking proof of the proposition that the abuse of power by member States within international organizations like the World Bank — “politicization” — is unilateral economic coercion of borrowing countries, prohibited by international law. Finally, the book purports to demonstrate that certain practices related to the governance of the World Bank, such as political motivation in the exercise of weighted voting privileges and certain cases of direct instruction of Executive Directors by member country governments, are prohibited by the Bank’s constituent treaties and international law generally.

The principal contribution of this book, a publication of the Graduate Institute of International Affairs in Geneva, is a series of factually oriented, carefully documented case studies. Three of these extended

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1. BARTRAM S. BROWN, *THE UNITED STATES AND THE POLITICIZATION OF THE WORLD BANK: ISSUES OF INTERNATIONAL LAW AND POLICY* 14 (1992).

2. *Id.* at 8.

3. *Id.* at 15.

narratives receive especially close attention: (1) the give-and-take between the Bank and the United Nations over *apartheid* in South Africa and Portuguese colonial rule in Angola and Mozambique; (2) the Bank's lending policies toward the Allende regime in Chile against a background of disputes over the adequacy of compensation for governmental expropriation of the property of foreign nationals; and (3) an attempt in the late 1970s by the United States to preclude the use of its contributions to the Bank for loans and assistance to Vietnam, Cambodia, and Laos because the governments of those countries had been insufficiently responsive to inquiries concerning members of the U.S. military missing in action in Southeast Asia. Additionally, the book catalogues and evaluates legislation enacted by the U.S. Congress intended to affect the Bank's policy toward its borrowers based on criteria such as human rights, narcotics, nuclear weapons, environment, expropriation of foreign investments, competition with U.S. exports, and policies with respect to missing U.S. service personnel. The work not only collects these statutory mandates in one place, apparently for the first time, but also describes and analyzes the implementation of many of the legislative directives relating to U.S. participation in the World Bank.

I. "POLITICIZATION" AS INCONSISTENCY WITH THE BANK'S CONSTITUTIONAL GOALS AND PURPOSES

The major strength of this book, by its own terms, supposedly lies in giving legal content to a phenomenon that previously appears to have been defined and described primarily in political science terms. The author's chief measure of "politicization" is consistency with the Bank's goals and purposes. The constitutional treaties for the primary constituent organizations that make up the World Bank examined in this book — the International Bank for Reconstruction and Development (IBRD)⁴ and the International Development Association (IDA)⁵ — provide the main guidance for determining the aims of those two international financial institutions. The author understandably relies heavily on language in the IBRD and IDA charters under the heading "Political Activity Prohibited" specifying that

The [international organization] and its officers shall not interfere in the political affairs of any member; nor shall they be influenced

4. Articles of Agreement of the International Bank for Reconstruction and Development, Dec. 27, 1945, 60 Stat. 1440, 2 U.N.T.S. 134, *amended by* 16 U.S.T. 1942, T.I.A.S. No. 5929, (Dec. 16, 1965) [hereinafter IBRD Articles of Agreement].

5. Articles of Agreement of the International Development Association, Jan. 26, 1960, 11 U.S.T. 2284, 439 U.N.T.S. 249 [hereinafter IDA Articles of Agreement].

in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated [in the relevant treaty].⁶

Based on these provisions, *The United States and the Politicization of the World Bank* then equates "political" considerations in the exercise of voting rights with "unrelated to the purposes of the World Bank." While hardly necessary, the book also goes considerably farther. The author asserts that failure by Bank member States to observe this standard in the exercise of their voting power may, under some circumstances, rise to the level of affirmative intervention by the Bank itself in the internal affairs of a borrowing country of the sort prohibited by the Charter of the United Nations.⁷ An alternative interpretation, not considered by the author, is that this provision is intended simply to remove the nature of the borrower's political character from the Bank's calculus.⁸ Whichever way one might be inclined to read this passage in the Bank's Articles of Agreement, the author's analysis never rises above the level of the tautological. Indeed, as he himself acknowledges, the test of consistency with the institution's

6. IBRD Articles of Agreement, *supra* note 4, art. IV, § 10, 60 Stat. at 1449, 2 U.N.T.S. at 158; IDA Articles of Agreement, *supra* note 5, art. V, § 6, 11 U.S.T. at 2294, 439 U.N.T.S. at 266-68; *see also* IBRD Articles of Agreement, *supra* note 4, art. III, § 5(b), 60 Stat. at 1444, 2 U.N.T.S. at 146 (Bank shall oversee use of loan proceeds "with due attention to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations."); IDA Articles of Agreement, *supra* note 5, art. V, § 1(g), 11 U.S.T. at 2292, 439 U.N.T.S. at 264 (Association shall oversee use of loan proceeds "with due attention to considerations of economy, efficiency and competitive international trade, and without regard to political or other non-economic influences or considerations.").

7. U.N. CHARTER art. 2, ¶ 7 ("Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state.").

8. The prohibitions on political activity in the IBRD and IDA charters were

drafted by the British delegation to the Bretton Woods conference to be incorporated into the treaty establishing the IMF [International Monetary Fund] in order to placate the Soviet Union [which sent a delegation to the Bretton Woods conference but did not become a Bank member until 1992 and 1993, when Russia and the former Soviet republics joined the Bank]. For various reasons, the clause was not inserted in the IMF agreement, but was incorporated into the IBRD charter in order to assure the Soviets and other communist countries that the Bank would not try to change their political systems.

LAWYERS COMMITTEE FOR HUMAN RIGHTS, *THE WORLD BANK: GOVERNANCE AND HUMAN RIGHTS* 17 (1993). Echoing this theme, the U.S. Secretary of the Treasury, referring to the Bretton Woods Conference, stated that "[a]ll the discussion was on the economic and financial requirements of those countries. . . . [A]t no time was a question raised as to the political ideology of a country." *An Act to Provide For the Participation of the United States in the International Monetary Fund and the International Bank for Reconstruction and Development: Hearings on H.R. 3314 Before the Senate Comm. on Banking and Currency, 79th Cong., 1st Sess.* 15 (1945).

principal objectives is not amenable to precise application, at least in some cases.

Accordingly, a full inquiry into a particular act's "politicized" character requires the consideration not just of effect, but a subjective examination of "intentions . . . [which] are fully as important as . . . actions."⁹ The author relies repeatedly on an advisory opinion in which the International Court of Justice (ICJ) concluded that opposition to the admission of States to the United Nations based on criteria other than those set out in the U.N. Charter is legally impermissible.¹⁰ The ICJ's advisory opinion expressly addressed only a situation in which the explicitly stated justification for an action by a member State in an international organization conflicts with an exclusive list of acceptable reasons set out in that organization's organic treaty. As the author acknowledges, however, that opinion specifically does not address improper motives for which there is no objective evidence. In such a case, said the Court, "reasons, which enter into a mental process, are obviously subject to no control."¹¹ One way of looking at the lesson of this opinion is that votes in international organizations can be supported by even the thinnest rationale consistent with the aims of the organization in question. In the case of the World Bank, all that arguably would be necessary is a mildly plausible veneer of economic justification.

Perhaps surprisingly, the Bank's professional staff has been largely unsuccessful in embellishing this learning by enumerating impermissible political factors with precision. The author of this book documents statements from the early years of the Bank's history that identify conditions of political instability or uncertainty as economic factors relevant to the Bank's decisionmaking. A recent memorandum prepared by the Bank's General Counsel reinforces that linkage in the potentially very large and poorly defined category of cases in which political instability, doubtful domestic security, political changes, partial or complete foreign occupation, or civil strife may acceptably be considered in the Bank's determination of creditworthiness.¹² One obvious consequence of this approach is the context-dependent flexibility that it leaves for the Bank's staff to define the terms "political" and "economic" in particular cases.

9. BROWN, *supra* note 1, at 229.

10. Advisory Opinion on Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter), 1947-48 I.C.J. 57 (May 28, 1948).

11. *Id.* at 60.

12. Ibrahim F.I. Shihata, *The World Bank and "Governance" Issues in its Borrowing Members*, in *THE WORLD BANK IN A CHANGING WORLD* 53, 75-76 (Franziska Tschofen & Antonio R. Parm eds., 1991).

The author's own case studies ultimately demonstrate the profound difficulty in applying a test of motive in determining the validity of acts by and within an intergovernmental organization. These case studies and other factual data provided by the author support several generic conclusions. First, the Bank's professional staff is sufficiently insulated by the institutional structure of the international organization that it can resist political pressures, at least up to a point. On the other hand, institutional dynamics at the Bank can change at the insistence of donor country governments with the most clout in the institution because they give the most money and hold the largest number of votes. Moreover, the Bank's professional staff can — when it chooses or when it is compelled out of political necessity — link economic and political issues in a determination of creditworthiness that excludes purely political considerations. So, the Bank terminated assistance to Chile during the Allende period while denying a political motivation.¹³ Similarly, then-World Bank President Robert McNamara promised to suspend lending to Vietnam for economic, not political, reasons. As *The United States and the Politicization of the World Bank* acknowledges, this overlap between "political" and "economic" considerations makes it very difficult to dissect and categorize a particular case after the fact either neatly or definitively

Consequently, "politicization" is identified in this book predominately through an inductive process that relies on the case-by-case enumeration of empirical examples that the author chooses to characterize as animated by political goals. In attempting to craft a more precise legal test of "politicization," the author admits the arduous nature of determining whether a State has deviated from obligations to refrain from impermissible political behavior as defined, for instance, by the organic, constituent instrument of an international organization like the World Bank.¹⁴ By contrast, ascertaining whether a State's rights have been affected by impermissible "politicization," as distinct from a State's failure to observe its legal commitments, is said to be more susceptible of identification from a legal point of view. As discussed below, the book's treatment of this latter question has serious analytical flaws. Moreover, definition of the term "economic," which characterizes those activities that clearly fall within the goals and purposes of the institution, receives scant attention. Consequently, the book largely fails to deliver on its cardinal pledge that "politicization can be defined not only as a political phenomenon, but as a legal phenomenon as well."¹⁵

13. BROWN, *supra* note 1, at 161.

14. *Id.* at 27.

15. *Id.* at 7.

Perhaps some of the case studies involving clearer examples of political motivation, such as the cutoff of aid to Vietnam, can be explained by the author's analysis. Other cases present considerably greater difficulties. For example, legislation mandating U.S. opposition to loans that might increase competition with U.S. agricultural exports, including palm oil, sugar, and citrus crops, is one of the most egregious examples of unilateral, protectionist self-interest described in the book. But while there might be other good reasons why this policy is poorly judged or even illegal, it does not fail for want of strictly economic motivation. From the point of view of this book, treatment of this legislation is further complicated by its stated purpose of "combat[ing] hunger and malnutrition and . . . encourag[ing] economic development in the developing countries."¹⁶ The author makes no attempt whatsoever to reconcile this stated intent, which is presumably consistent with the Bank's goals and purposes, with the operative effect of the statutory directive by describing a methodology that might be applied in other cases of incongruity between the two.

Especially revealing is the author's praise for the "constructive"¹⁷ efforts by the United States, the primary "politicizing" protagonist, through legislation adopted by the U.S. Congress and interventions from the Executive Branch, to improve the Bank's environmental performance. Unlike other instances of "politicization," this policy agenda is said to advance the interests of all Bank member countries, to conform to principles of multilateralism as demonstrated by the support of other members, and to enhance the Bank's fundamental economic mission.¹⁸ By contrast, the author claims that similar U.S. laws designed to advance universal international norms for the protection of human rights, which have considerably deeper underpinnings in international law than virtually any multilateral standards for protection of the environment, are "primarily political rather than economic."¹⁹

By distinguishing environment as virtually the sole example of apolitical attempts by the United States to influence World Bank policies, the author reveals serious cracks in his intellectual edifice. He concludes, as he must, that "[t]he Bank should be able to adjust to changed circumstances . . . , but this can only be brought about through the initiative

16. 22 U.S.C. § 262g (1988).

17. BROWN, *supra* note 1, at 237.

18. See generally Shihata, *supra* note 12, at 135-80 (analysis by World Bank General Counsel in chapter entitled "The World Bank and the Environment—A Legal Perspective").

19. BROWN, *supra* note 1, at 198. Cf. Shihata, *supra* note 11, at 133 (statement by World Bank General Counsel that no balanced development can be achieved without the realization of a minimum degree of all human rights, material or otherwise, in an environment that allows each people to preserve its culture while continuously improving its living standards).

of the member states.”²⁰ His hollow efforts, however, to distinguish injurious “politicization” from “constructive” reform advocated by member States demonstrate the inherent futility of defining and identifying impermissible “politicization” in legal terms. For, however “constructive” and successful it may have appeared, the premises of the environmental reform campaign in large measure have been precisely the opposite of the principles espoused in *The United States and the Politicization of the World Bank*.

This book treats environmental questions as technical, scientific, and methodological, and therefore related to the fundamental economic mission of the Bank in a way that human rights is not. Environmental activism, however, played a key role in the peaceful political revolutions in the countries of Eastern Europe, which are now targeted for a significant amount of World Bank lending in order to achieve environmental and other goals. More generally, the relationship between public participation in governmental decision-making processes — *i.e.*, democracy — and environmental quality has now been firmly established at the highest level of universality as an international standard in the Rio Declaration on Environment and Development,²¹ adopted by over 100 heads of State at the United Nations Conference and Development in June 1992. As such, environmental concerns in many cases have been the thin end of the wedge for demands for greater public scrutiny and accountability of the actions of Bank staff and member country governments — a situation that is unlikely to be described as apolitical and in any event is not confined purely to the realm of economics. For similar reasons, U.S. policy on environment at the World Bank directly challenges the author’s vision of technocratic decisionmaking by highly trained bureaucratic elites through

20. BROWN, *supra* note 1, at 237.

21. The Rio Declaration on Environment and Development, June 13, 1992, U.N. Doc. A/Conf.151/5/Rev.1 (1992), reprinted in 31 I.L.M. 876, THE EARTH SUMMIT: THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT (UNCED) 118 (Stanley P. Johnson ed., 1993), 3 AGENDA 21 & THE UNCED PROCEEDINGS 1617 (Nicholas Robinson ed., 1992), 22 ENVTL. POL’Y & L. 268 (1992), 1 REV. EUR. COMMUNITY & INT’L ENVTL. L. 348 (1992). Principle 10 of the Rio Declaration provides as follows:

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities [*sic*], and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

Rio Declaration, *supra*, princ. 10.

active and systematic encouragement of participation by borrowing countries['] nongovernmental environmental, community and indigenous peoples' organizations at all stages of preparations for country lending strategies, policy based loans, and loans that may have adverse environmental or sociocultural impacts; and full availability to concerned or affected nongovernmental and community organization[s], early in the preparation phase and at all subsequent stages of planning[,] of full documentary information concerning details of design and potential environmental and sociocultural impacts of proposed loans.²²

II. "POLITICIZATION" AS IMPERMISSIBLE INSTRUCTION OF NATIONAL REPRESENTATIVES TO THE BANK

Of necessity, *The United States and the Politicization of the World Bank* addresses the implications of structural and institutional considerations in the governance of the Bank. One Governor, ordinarily that country's finance minister, represents each member State at the Bank. The Board of Governors meets as a body once a year and in practice gives only very general guidance to the Bank's professional staff. Twenty-four Executive Directors, appointed or elected by member country governments, represent member nations in Washington on a day-to-day basis, have offices physically located in the World Bank complex, and approve staff proposals for individual loans. As in the case of the other major donor States of Japan, Germany, the United Kingdom, and France, the U.S. Executive Director represents no other member States. Other Executive Directors represent groups of countries, some of them quite curious. For instance, one Executive Director represents the unlikely configuration of the Netherlands, Armenia, Bulgaria, Cyprus, Georgia, Israel, Moldova, Romania, and Ukraine. The individual generally identified as the Executive Director from Canada, a donor State, also represents most of the Caribbean countries, which are borrowers.²³

The Board of Executive Directors takes decisions by weighted majority voting. Votes are allocated according to a formula that depends on the number of a member State's shares and its capital contribution to the institution.²⁴ So, among the 177 current IBRD members, the United

22. 22 U.S.C. § 262m-5(b)(4), (5) (1988).

23. See 1993 WORLD BANK ANN. REP. 232.

24. IBRD Articles of Agreement, *supra* note 4, art. V, § 3, 60 Stat. at 1451, 2 U.N.T.S. at 162; IDA Articles of Agreement, *supra* note 5, art. VI, § 3, 11 U.S.T. at 2296-97, 439 U.N.T.S. at 270.

States now exercises somewhat more than seventeen percent of the total voting power in the IBRD, nearly three times as much as the next largest shareholder, Japan.

To some, the nature and scope of the Executive Directors' authority over the Bank's operations and its management and professional staff is somewhat unclear. Based on the text of the Bank's constitutional treaties,²⁵ an opinion of the Bank's General Counsel asserts that member governments "are under an obligation not to influence the Bank's President and staff in the discharge of their duties, and Executive Directors are under the duty not to act as the instrumentality of members to exert such prohibited influence."²⁶

The author of *The United States and the Politicization of the World Bank* does not take such a categorical view. He notes that the negotiating history of the Bank's Articles of Agreement reflects not only this position, but also a competing view advanced by the United States and similarly accommodated by the text of the Bank's constituent instruments. From this opposing perspective, the Executive Directors are subject to direct supervision by member country governments. Any ambiguity, however, has supposedly been removed because "*the [subsequent] practice of the Bank and its member states has reflected a clear but limited consensus to the effect that members are not to use their voting rights in that organization as a political tool for the pursuit of objectives unrelated to the Bank's purposes.*"²⁷ As a result, concludes the author, the Executive Directors "have what might be referred to as a political responsibility to defend the national interests of the governments they represent, but they also have responsibilities as members of an international organ."²⁸ Consequently, the activities of Executive Directors may reflect national positions, but only so long as instructions

25. See *supra* note 6 and accompanying text.

26. See Shihata, *supra* note 12, at 107 (quotation and analysis by World Bank General Counsel of his own internal memorandum). According to this view, the Bank's Executive Directors are "officers . . . of the Bank" who "owe their duty entirely to the Bank and to no other authority." IBRD Articles of Agreement, *supra* note 4, art. V, § 5(c), 60 Stat. at 1452, 2 U.N.T.S. at 166. Consequently, the Executive Directors are subject to the prohibition on "interfer[ing] in the political affairs of any member [and] be[ing] influenced . . . by the political character of the member or members concerned" in the exercise of their voting rights because "[o]nly economic considerations shall be relevant to [the] decisions" of the Bank and its officers. *Id.* art. IV, § 10, 60 Stat. at 1449, 2 U.N.T.S. at 158; see also *supra* note 6 and accompanying text. The memorandum consequently concludes that "[t]he Chairman of the Board [of Executive Directors] is entitled to rule out of order a political debate or statement which does not have a clear relevance to the economic considerations related to the subject matter under discussion." See Shihata, *supra* note 12, at 46.

27. BROWN, *supra* note 1, at 236.

28. *Id.* at 108 (footnote omitted).

from the governments represented by those individuals are consistent with the goals and purposes of the Bank. Presumably the Executive Directors are then under a legal obligation to disregard impermissible attempts at instruction by member country governments for prohibited political purposes.

Both the Bank's legal opinion and the author of this book acknowledge that, at least in some cases, allegiance to the Bank requires Executive Directors to disregard the parochial interests of member State governments. On a practical level, this conclusion mirrors the central lacuna identified by this book: the absence of a meaningful test for distinguishing between permissible instructions on issues within the scope of the Bank's goals and purposes on the one hand, and improper "political" directives on the other. For the Executive Director representing the United States, this is a problem with immediate and pressing implications. As the author notes, it is no secret that the Executive Branch has routinely flouted prohibitions on direct instruction of the U.S. Executive Director, who until recently has held a concurrent appointment as a special assistant to the U.S. Secretary of the Treasury.

More profoundly, the author's conclusion with respect to the appropriate role of the Bank's Executive Directors raises very real questions of accountability. For, if the Bank's professional staff is subject to direction by the Board, and the Board's responsibility is strictly to the Bank as an institution, to whom is the Bank itself ultimately accountable? Quite plainly, this functional perspective tends to attenuate seriously the authority of member country governments over the Bank's professional staff. At the starkest extreme, accountability is the price of efficiency and efficacy.

By comparison with the International Labor Organization and the United Nations Educational, Scientific and Cultural Organization, both of which are cited as examples of undesirable "politicization," the World Bank is driven much more by the discretionary activities of its professional staff, which has considerable autonomy in achieving a clearly identifiable, operational, on-the-ground mission: lending very large sums of money.²⁹ In the fiscal year that ended in the middle of 1993, the IBRD and IDA together approved 245 loans and credits totalling \$23.7 billion,³⁰ many of which financed major development projects. If the author's criticisms were to be fully accepted, there is every reason to believe that a technocratic view of the world, in the case of the Bank founded on

29. See Stephen Zamora, *Voting in International Economic Organizations*, 74 AM. J. INT'L L. 566, 589-90 (1980) (characterizing Board votes as legitimizing decisions made by staff).

30. 1993 WORLD BANK ANN. REP. 167.

economics and economists, could be mobilized with limited or no accountability to governments or the public. The author of *The United States and the Politicization of the World Bank* acknowledges that the "Western liberal economic philosophy,"³¹ in which "political and economic or technical relations are fundamentally and rightly separable,"³² that serves as the foundation for the World Bank and other Bretton Woods institutions is not necessarily based on neutral, universally agreed principles. Alternative views, however, are treated dismissively as "to some extent reflect[ing] Marxist thought."³³

Serious consequences of this *Weltanschauung* that are anything but Marxist are readily apparent from the point of view of the public in borrowing countries, the intended beneficiaries of Bank lending. To the extent that the activities of the Bank's professional staff are partially shielded from influence by member country governments, individuals and organizations that represent them may have no right to be consulted in decisions, such as the financing of large dams that displace thousands of people, that affect their very lives and livelihoods. While that situation is slowly changing, thanks to public criticism and efforts at reform from within and outside the Bank, the most effective mechanism for influencing the Bank is still through member country governments, most often those of donor States.³⁴

Under these circumstances, one person's "politicization" may be the only route for another to achieve even a modicum of democratic representation in a highly technocratic setting. Public participation, in which official decisions are made after input from affected non-State actors, has assumed increasing prominence in recent years as a legitimizing factor in the activities of technocratically oriented international bodies like the World Bank, at least as a policy consideration if still perhaps not as a matter of customary international law.³⁵ Significantly, on the domestic level, the analogue of a strictly "functional" approach has been rejected in favor of a structure in which public policy is shaped not only by technical considerations, but also by substantive goals defined at least in part by overtly political considerations and direct public input into the regulatory process.³⁶

31. BROWN, *supra* note 1, at 23.

32. *Id.*

33. *Id.*

34. See generally David A. Wirth, *Legitimacy, Accountability, and Partnership: A Model for Advocacy on Third World Environmental Issues*, 100 YALE L.J. 2645 (1991).

35. See, e.g., *id.*

36. See, e.g., Daniel J. Fiorino, *Environmental Risk and Democratic Process: A Critical Review*, 14 COLUM. J. ENVTL. L. 501, 546 (1989) (arguing that administrative process "should

Indeed, one could imagine a parallel book entitled "The Democratization of the World Bank" that describes attempts to inject elementary principles of good government, such as access to information and opportunities for public comment, into the Bank's governance using many of the techniques dismissed as impermissible "politicization" in *The United States and the Politicization of the World Bank*. Precisely to fill this gap by assuring a measure of independent, objective oversight of the activities of its staff, the Bank's Board of Executive Directors recently created a new, independent Inspection Panel to which both governments and nongovernmental organizations may appeal the staff's failures to observe the Bank's own internal standards or Bank staff's inadequate supervision of the implementation of loan covenants by borrowers.³⁷ Interestingly, the author identifies the very lack of access to Bank documentation as a prime cause of "hidden politicization,"³⁸ but he engages in little reflection as to how this situation might be changed except by pressure from member country governments that itself might well be described as "politicized."

The book is generally thin in its treatment of the real world dynamics that result from the organization of the Bank, the structure of the U.S. Government, and interactions between the two. Often acts or statements are attributed to the Bank as such, with little attention to the relationship between the Bank's professional staff and its Board of Executive Directors, which is crucial to a thorough understanding of the institution's decision-making processes and their potential for "politicization." The author barely attempts to distinguish political activities of Bank member country governments and the Executive Directors that represent them from the responses of the Bank's professional management to political pressures. When distinctions are made, the author pays very inordinate attention to the role of the Board while giving short shrift to how the Bank's professional staff exercises its considerable discretion. In the case study of a hiatus in lending during the Allende regime in Chile, for

reflect democratic values and the intellectual contributions of democratic theory" notwithstanding the public's lack of technical expertise); Robert Reich explains:

The job of the public administrator is not merely to make decisions on the public's behalf, but to help the public deliberate over the decisions that need to be made. Rather than view debate and controversy as managerial failures that make policymaking and implementation more difficult, the public administrator should see them as natural and desirable aspects of the formation of public values, contributing to society's self-understanding.

Robert B. Reich, *Public Administration and Public Deliberation: An Interpretive Essay*, 94 YALE L.J. 1617, 1637 (1985).

37. See *The World Bank Inspection Panel*, I.B.R.D. Res. No. 93-10; I.D.A. Res. No. 93-6 (Sept. 22, 1993) (copy on file with *Michigan Journal of International Law*).

38. BROWN, *supra* note 1, at 240-42.

example, "politicization" appears to have been accomplished with barely a single negative vote from the U.S. Executive Director at the Board level.³⁹ The author acknowledges in his conclusion that "the most effective politicizing actions are those which succeed in blocking loans before they are presented to the Bank's Executive Directors."⁴⁰ He then throws up his hands, however, observing that "[w]here the politicizing influence is applied subtly and behind the scenes, it is more difficult to monitor and to regulate."⁴¹

Likewise, much of the "politicizing" legislation must be read against a tug of war between the U.S. Congress and the Executive over the role of the United States in the governance of the Bank. While the author correctly observes that the Executive Branch, which is the point of contact for the U.S. Executive Director to the Bank, has been reluctant to serve as merely a transmission belt for implementing congressional policies at the Bank, this very important factor receives little additional attention beyond mere identification. So, for instance, the author observes that "[t]he US government has been notoriously unsuccessful in enlisting the support of other Bank members for its politically inspired 'no' vote positions"⁴² in the Bank's Board of Executive Directors as a result of legislative mandates. Hardly considered is the possibility that this phenomenon might result from a rote, as opposed to enthusiastic, implementation of these congressional directives by the Executive Branch in which there is little or no desire on the part of the latter to secure the support of other Bank member countries.

III. "POLITICIZATION" AS UNILATERAL ECONOMIC COERCION

The author of *The United States and the Politicization of the World Bank* goes on to identify "politicization" as a violation of norms of international law outlawing economic coercion whose source is custom or other authority besides the World Bank's constituent treaties. The book strongly criticizes the assumption that "unilateral economic coercion (initiated by one sender state acting alone) cannot be exercised through institutions such as the multilateral development banks."⁴³ Rather, the author asserts that the multilateral institution of the Bank itself can engage in proscribed unilateral coercion, as distinct from the direct exercise of

39. *Id.* at 169.

40. *Id.* at 235.

41. *Id.*

42. *Id.*

43. *Id.* at 10.

suasion between Bank member countries through bilateral channels such as foreign assistance provided by a single donor State. The work's analysis, which concludes that unilateral economic coercion can occur through the exercise of power or the abuse of rights in an attempt to influence the policies of a multilateral forum like the World Bank, should be extremely controversial.

Loan agreements between the Bank and borrowing countries have a status in international law similar to that of treaties.⁴⁴ As suggested by this characterization, the critical element of consent is fundamental to the relationship between the Bank and the borrower. Lending proposals must be agreed by the professional staff and the borrowing country government before presentation to the Board of Executive Directors for subsequent approval. Bank staff may refuse to pursue negotiations on a loan proposal, or negotiations between the borrowing country government and the Bank may break down. Although at the negotiation stage there may be some potential for "politicization" as described in this book, the Bank's professional staff is not under the direct, day-to-day control of the Board of Executive Directors. Even at the Board level, a member country can hardly be said to have a legally identifiable right to a particular loan, because loan proposals must be approved by the Board.

Alternatively, World Bank member States might have a legal right, whose source is the Bank's Articles of Agreement, to an "impartial[]" decision-making process in which "[o]nly economic considerations shall be relevant."⁴⁵ But even then, an aggrieved Bank member State could terminate all "coercion" by merely discontinuing further discussions with Bank staff. The author cites no primary authority that suggests the contrary. While norms of international law that might govern the exercise of unequal bargaining power in a consensual setting could have some relevance in this context, the author does not allude to any such principles. Norms governing duress or coercion that might invalidate a treaty under international law generally demand a considerably higher threshold involving the threat of or actual use of force.⁴⁶ The author understandably

44. See Lester Nurick, *Certain Aspects of the Law and Practice of the International Bank for Reconstruction and Development*, in *THE EFFECTIVENESS OF INTERNATIONAL DECISIONS* 100, 127 (Stephen M. Schwabel ed., 1971) (statement by World Bank Deputy General Counsel).

45. IBRD Articles of Agreement, *supra* note 4, art. IV, § 10, 60 Stat. at 1449, 2 U.N.T.S. at 158; IDA Articles of Agreement, *supra* note 5, art. V, § 6, 11 U.S.T. at 2294, 439 U.N.T.S. at 266-68. See *supra* note 6 and accompanying text.

46. See, e.g., Vienna Convention on the Law of Treaties, May 22, 1969, art. 52, S. EXEC. DOC. L., 92d Cong., 1st Sess. (1971), reprinted in 8 I.L.M. 679 (1969), 63 AM. J. INT'L L. 875 (1969) ("A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.").

and correctly does not characterize negotiations between the Bank and its borrowing members as rising to the level of threat of force or actual force.

In discussing a series of negative Board votes by the United States motivated by concern for India's nuclear policy, the author acknowledges the weaknesses in his reasoning. "[W]ithout the support of other [World Bank] members," he observes, those votes "could not actually affect the rights of India within the IDA"⁴⁷ and were of "purely symbolic" significance.⁴⁸ Presumably for this reason, after conceding that "it is hard to escape the conclusion that any conditions placed upon bilateral aid by the donor are voluntarily consented to by the recipient,"⁴⁹ the author devotes a scant three pages to the legality of influencing recipient countries through the channel of development assistance, citing only one marginally persuasive interpretive reference and no primary sources. While the treatment of bilateral aid is thin, the author provides no authority whatsoever for the proposition that lending provided through multilateral channels like the World Bank has violated customary norms of international law.

In any event, it is far from clear that a single State — even a country like the United States operating in a weighted decision-making context, but still with less than one-fifth of the voting power in the World Bank — could be said to be exercising prohibited unilateral pressure in a multilateral setting. The only actions with legal effect in the multilateral institution are those taken by the Bank itself, acting through its prescribed constitutional processes, and not those of individual members. Even the five largest donors to the Bank acting in concert could not by themselves assure that a particular loan proposal would be disapproved. Such a level of agreement would arguably qualify as a legally significant pattern of behavior. With that level of consensus, moreover, the Bank's Board of Executive Directors could formally render a definitive interpretation of the institution's constituent treaties.⁵⁰

The author admits as much by rejecting a rigidly textual interpretation of the Bank's Articles of Agreement based strictly on the original intent of the drafters in favor of an "evolving, dynamic"⁵¹ view of the World

47. BROWN, *supra* note 1, at 26.

48. *Id.* at 25–26.

49. *Id.* at 84.

50. IBRD Articles of Agreement, *supra* note 4, art. IX(a), 60 Stat. at 1460, 2 U.N.T.S. at 186 ("Any question of interpretation of this Agreement arising between any member and the Bank or between any members of the Bank shall be submitted to the Executive Directors for their decision."); *see also* IDA Articles of Agreement, *supra* note 5, art. X(a), 11 U.S.T. at 2308, 439 U.N.T.S. at 288 (same).

51. BROWN, *supra* note 1, at 99.

Bank as responsive to changing needs. Indeed, it is precisely this tension between the Bank's narrowly circumscribed economic mission on the one hand and the imperative to operate in larger contextual settings on the other that gives rise to the central dilemma identified, but hardly resolved, in this book.

The question of the legality of conditions on development assistance is of far more than just theoretical concern. The Bank's borrowing countries have on occasion objected to environmental conditions in loan agreements not as ill-judged exercise of Bank staff's considerable discretion or even as departures from the Bank's Articles of Agreement. Instead, so-called "green conditionality" has been attacked as an outright violation of sovereignty that implies an infringement of the exclusive prerogative of borrowing States to govern within their territories.⁵² These grossly overstated objections go well beyond those in this book. Nonetheless, those complaints demonstrate the potential for the author's flawed analysis to undermine, rather than to enhance, the Bank's capacity to fulfill its mission of encouraging the adoption of "constructive" policies in developing countries.⁵³ By mistakenly asserting that the actions of the Bank as an institution could violate customary norms proscribing unilateral economic coercion, this book's approach may well impede realization of "the need for evolutionary development in [the Bank's] mandate"⁵⁴ identified by the author himself.

CONCLUSION

The United States and the Politicization of the World Bank addresses a question that has assumed great importance in both practice and principle. Overall, the book is a very thoughtful and meticulous effort that codifies, elaborates, and embellishes a straightforward, mainstream approach to the World Bank as an institution. The author takes the Bank's principal legal authorities at face value, largely accepts the institution's interpretation of those instruments, and carries his analysis about as far as possible within those confines. The case studies are carefully documented and dissected, with copious references to primary materials. This work appears to contain the first published inventory and evaluation of U.S. legislation intended to influence the World Bank and the U.S. posture within that international financial institution. Additionally, the book contains an extensive bibliography and a mildly helpful index.

52. See, e.g., *World Bank: Greener Faces for Its Greenbacks*, *ECONOMIST*, Sept. 2, 1989, at 41.

53. BROWN, *supra* note 1, at 237.

54. *Id.*

But in the end, the author provides little insight into the task he sets out for himself: establishing legal standards for "politicization." Ironically, the book is most successful in exposing the limits of legal analysis and the need to consider alternative points of view. Unfortunately, the author never resolves the contradictions he himself identifies. The problem is that, depending on the context and the perspective of the observer, broad gauge social and human welfare issues like environment and human rights may be political, economic, neither, or both, with no clear demarcation between categories. Even Bank staff has difficulty in making these distinctions with precision, and the calculus may also change over time. The complexity of distinguishing in a legally meaningful way between actions that have a genuine economic justification and those for which an economic rationale is a mere pretext may exacerbate rather than ameliorate difficulties in particular concrete situations like the case studies fastidiously documented in this book.

Even if the book was successful in its goal, the application of legal standards to the actions of Bank member countries and the institution's professional staff might ultimately be a pointless exercise, unless the underlying causes of "politicization" are identified and addressed. Although the author observes that "[p]oliticization is often said to be increasing,"⁵⁵ there is little reason to believe that a legal examination of the question will necessarily affect the behavior of sovereign States presently inclined toward "politicization" in the exercise of their rights and privileges in a highly discretionary, evolving, and dynamic setting. The temptation to attempt to free international institutions from political constraints, as advocated by the author of this book, is very great. However, the book ultimately provides only a limited and unsatisfying prescription for assuring that such an approach will operate effectively in the face of rampant "politicization." At the most fundamental level, the book's unsuccessful attempt to grapple with its central task demonstrates the need for an alternative to apolitical, functional theories of international organization. The example of the World Bank further highlights the potentially high costs in terms of democratic accountability if technocratic institutions are insulated from political controls. In the end, it may be that "politicization" is not all bad, but may, at least in some cases, serve as a necessary check on the concentration of power in international bureaucratic elites.

55. *Id.* at 13.